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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,613	02/24/2004	Harvey M. Wescott III	33413	2947

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PEARSON & PEARSON, LLP  
10 GEORGE STREET  
LOWELL, MA 01852

EXAMINER
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NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,613	<b>Applicant(s)</b> WESCOTT, HARVEY M.	
	<b>Examiner</b> Jennifer E. Novosad	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether "a slot" recited in line 5 of claim 2 is one of the "column of slots" set forth in lines 9 and 11 of claim 1. Thus the metes and bounds of the claim cannot be ascertained since it is unclear whether an additional slot is being required in claim 2.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,379,315 (Broadwin '315).

Broadwin '315 discloses a platform comprising a top plate (2) disposed above a middle plate (6) which is disposed above a bottom plate (3); each of the plates (2, 6, and 3) comprises a matrix of holes (20, 32b, and 22, respectively, as in Figure 1 - 3 rows from the left to middle of

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Figure 3) aligned with one another (see Figure 5); a column of slots (20 - from the middle to the right in Figure 3) in the top plate and positioned adjacent to the matrix of holes in the top plate (2) and a column of slots (32a) in the middle plate (6) aligned with the slots (20) in the top plate (2); *with respect to claim 2*, a plurality of rows (see Figure 3 - one row extends from left to right in Figure 3, e.g., 4 rows are provided) is provided in the platform with each row (e.g., the row at the top of Figure 3) comprising a first type hole, a second type hole, and a slot; and *with respect to claim 3*, the slots in the top plate (2) are through slots (see Figure 5).

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,778,232 (McMorrow, Jr. '232).

McMorrow, Jr. '232 discloses a platform comprising a top plate (27) disposed above a middle plate (25) which is disposed above a bottom plate (23); each of the plates (27, 25, and 23) comprises a matrix of holes (7 and 522 - half of the rows from the left to middle of Figure 1) aligned with one another (see Figure 2); a column of slots (7 - from the middle to the right in Figure 1) in the top plate and positioned adjacent to the matrix of holes in the top plate (27) and a column of slots (7) in the middle plate (25) aligned with the slots (7) in the top plate (27); *with respect to claim 2*, a plurality of rows (see Figure 1 - one row extends from left to right in Figure 1) is provided in the platform with each row (e.g., the row at the top of Figure 1) comprising a first type hole, a second type hole, and a slot; and *with respect to claim 3*, the slots in the top plate (27) are through slots (see Figure 2).

*With respect to the recitation in claim 2*, it is noted that the first type hole, second type hole and slot have not been compared to one another. *Thus*, even though all of the elements

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shown in Broadwin '315 and McMorrow, Jr. '232 are of the same size and shape, each has been defined to either be a first hole, second hole, or slot, as deemed necessary by the claim language.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broadwin '315, alone.

Broadwin '315 discloses the platform as advanced above whereby the slots (32a) of the middle plate (6) are through slots are of a different size than the slot 920) of the top plate (2).

The claim differs from Broadwin '315 in requiring the slot of the middle plate to be a non through slot.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the middle plate of Broadwin '315 such that the slots therein would be non through slots, thereby increasing structural support of articles placed therein.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMorrow, Jr. '232, alone.

McMorrow, Jr. '232 discloses the platform above whereby *with respect to claim 5*, the platform comprises spacers (29) for securing the top plate (27), the middle plate (25) and the bottom plate (23) together such that the spacers are inserted between the top plate (27) and the

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middle plate (25) and the middle plate and the bottom plate (23); and *with respect to claim 6*, the platform comprises standoffs (29 - between 21 and 23 in Figure 1).

The claims differ from McMorrow, Jr. '232 in requiring screws screwed into the spacers (claim 5) and standoffs (claim 6).

Although McMorrow, Jr. '232 does not disclose the use of screws, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have utilized screws in the platform of McMorrow, Jr. '232 for increased rigidity and stability of the platform.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1-6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claim of U.S. Design Patent No. D507,658 (Wescott, III '658), alone.

Wescott, III '658 shows the features of the platform as claimed in the claims of this application except for the slot in the middle plate comprising a non through slot (claim 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the slot in the middle plate as a non through hole, for increased support and stability of items placed in the slot of the top plate.

### ***Conclusion***

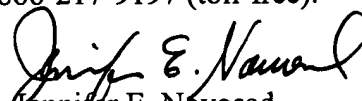
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note U.S. Patent No. 6,568,544.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

March 2, 2006